IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1037 of 1995

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)
Versus
GORDHANBHAI ZAVERBHAI MARADIA - Opponent(s)

==========

Appearance :
MR SP HASURKAR, APP, for Appellant(s) : 1,
MR DK MODI for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 5th August 1995 passed by the Judicial Magistrate, First Class, Bhavnagar, in Criminal case No.2965 of 1988 in Criminal Case No.2965 of 1988 whereby the respondent was acquitted of the offence alleged against him.

2. The prosecution case, in short, was that on 21st January 1988 the Food Inspector had visited the shop of the respondent and collected sample of turmeric powder. The same was sent for laboratory inspection and it was alleged that the same was adulterated. Accordingly a complaint came to be filed which was tried as Criminal Case No.2965 of 1988. After recording necessary evidence, learned Magistrate acquitted the respondents of the offences with which they were charged. It is against the aforesaid judgement and order the present appeal has been filed.

3. Mr. S.P. Hasurkar, learned APP, appearing for the appellant submitted that the sample was sent to Central Food Laboratory also and in the report of Central Food Laboratory and Regional Laboratory there is no discrepancy. He submitted that in both these reports

presence of foreign starch was found which was not permissible. He submitted that there was no discrepancy or irregularity in the process of taking sample. He therefore submitted that the appeal requires to be allowed.

4. Learned Advocate for the respondent submitted that the trial court has given cogent and convincing reasons for dismissing the case against the respondent and nothing is pointed out in this appeal to take a contrary view. He, therefore, submitted that this appeal requires to be dismissed.

5. The scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the

lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

6. I have heard learned Advocates for he respective parties. As a result of hearing and perusal of the record it is found from the record that there are material contradictions in the report of the laboratory. According to the first report the turmeric power is mixed with substance of husk of rice while the second report stats that the powder is mixed with wheat starch. Learned Advocate for the appellant could not to explain this

material contradiction on any count. Moreover, in both these cases only microscopic test was done. In the case of state of Gujarat on behalf of M.G.Shaikh, Food Inspector Vs. Ahmed GulamMohmed Umar, reported in 2004(1) FAC 62, it is held that test carried out by microscope to ascertain adulteration in turmeric powder not being reliable, the result thereof cannot be used to sustain the conviction. Thus, the trial court has come to the conclusion that the prosecution has not established the case against the respondent beyond reasonable doubt. In the present appeal learned Advocate for the appellant is not in a position to show anything evidence to take a contrary view of the matter. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chuudry (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of

> general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

8. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed. R & P, if lying in this Court, shall be sent back forthwith.

[K.S. JHAVERI, J.]

ar